D.B. INCOME TAX APPEAL NO.139/2006
(CIT, Jodhpur Vs. M/s. Dipesh Kumar Mankanwar Sidhawat & Party)

Date of order : 12.12.2006

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Sangeet Lodha, for the appellant.

Having heard learned counsel for the appellant we are of the opinion that no substantial question of law arise for consideration in this appeal.

The respondent-assessee is a liquor contractor. The assessing officer found that in view of the non-vouchable sales and many of the expenses claimed by the assessee, it is not possible to arrive at a fair determination of the taxable income of the assessee from the books of accounts maintained by the assessee and, therefore, rejected the books of accounts of assessee and resorted to best judgment assessment. The assessing officer applied uniform net profit ratio of 7% on the total sales by disallowing certain expenses and made certain additions in the income shown by the assessee.

On appeal, the CIT (Appeals) found that the estimate made by the assessing officer cannot be

sustained and entire additions made by the assessing officer were deleted.

The Tribunal found that entire deletion made by CIT (Appeals) was not justified. At the same time, the Tribunal was also of the opinion that applying the uniform Net Profit rate on retail sales of country liquor, IMFL and beer is not justifiable. In the totality of the circumstances, the Tribunal sustained Rs.5 Lakhs additions in the income returned by the assessee.

We are of the opinion that ultimately the assessment which is being made while resorting to best judgment assessment is founded on estimate and there is bound to be some guess work. Applying net profit rate is not the only method of best judgment assessment. The Tribunal has considered that assessee had to pay substantial amount due to short fall in lifting of country liquor and in guarantee money. In case the same is taken into account, the gross profit rate disclosed by the assessee comes to be higher than what has been disclosed by other persons in the same business. Considering these aspects, instead of resorting to applying net profit rate, the Tribunal considered it just and proper to sustain a lump sum additions of Rs.5 Lakhs. We may notice that this Court in Murlidhar's case has opined that when the unvouched sales becomes a reason for rejections of

books of accounts, the very same factors cannot be made the basis of making estimates. In totality of circumstances, it cannot be said that the finding is perverse and gives rise to any substantial question of law.

The appeal fails and is hereby dismissed.

(GOPAL KRISHAN VYAS), J. (RAJESH BALIA), J.

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